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*United States Secretary of Labor*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

EUGENE SCALIA,  
Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

SIN CITY INVESTMENT GROUP, INC., et al.

Defendants.

Case No. 2:19-cv-00361

**JUDGMENT AND  
ORDER**

Hon. James C. Mahan

1 This Court, having granted Summary Judgment in favor of the Secretary with respect to  
 2 the first and second claims described herein (ECF No. 46), hereby **ORDERS** the relief set forth  
 3 in this **JUDGMENT AND ORDER**.

4 I.

5 **IT IS ORDERED AND ADJUDGED** that judgment be entered for Plaintiff Eugene  
 6 Scalia, Secretary of Labor, U.S. Department of Labor, on the following claims:

7 1. By failing or refusing remit employee contributions to employee-participants of  
 8 American Leak SIMPLE IRA Plan (“the Plan”) from March 1, 2013 to May 20, 2017, Defendant  
 9 Sin City Investment Group, Inc. dba American Leak Detection (“Company”) and Defendant  
 10 Leland Keith Ozawa, acting in their fiduciary capacities, violated the Employee Retirement  
 11 Income Security Act of 1974 (“ERISA”) by:

- 12 a. Permitting the assets of the Plan to inure to the benefit of Defendant  
 13 American Leak and Defendant Ozawa, in violation of ERISA § 403(c)(1),  
 14 29 U.S.C. § 1103(c)(1);
- 15 b. Failing to act solely in the interest of the participants and beneficiaries of  
 16 the Plan and for the exclusive purpose of providing benefits to participants  
 17 and beneficiaries and defraying reasonable expenses of Plan administration,  
 18 in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
- 19 c. Failing to act with the care, skill, prudence, and diligence under the  
 20 circumstances then prevailing that a prudent man acting in a like capacity  
 21 and familiar with such matters would use in the conduct of an enterprise of  
 22 a like character and with like aims, in violation of ERISA § 404(a)(1)(B),  
 23 29 U.S.C. § 1104(a)(1)(B);
- 24 d. Causing the Plan to engage in transactions which they knew or should have  
 25 known constituted a direct or indirect transfer to, or use by or for the  
 26 benefit of, a party in interest, of assets of the Plan, in violation of ERISA §  
 27 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D); and
- 28 e. Dealing with assets of the Plan in their own interests and acting on behalf

1 of a party whose interests are adverse to the interests of the Plan or the  
2 interests of its participants and beneficiaries, in violation of ERISA §  
3 406(b)(1) and (2), 29 U.S.C. § 1106(b)(1) and (2).

4 2. By not having Plan governing documents from March 2013 to May 20, 2017, the  
5 Defendant Company and Defendant Ozawa violated ERISA by:

- 6 a. Failing to establish and maintain an employee benefit plan by written  
7 instrument, in violation of ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).  
8 b. Failing to provide, by written instrument, a procedure for establishing and  
9 carrying out a funding policy and method consistent with Plan objectives  
10 and statutory requirements, in violation of ERISA § 402(b)(1), 29 U.S.C. §  
11 1102(b)(1).  
12 c. Failing to describe, by written instrument, a procedure under the Plan for  
13 the allocation of responsibilities for the operation and administration of the  
14 Plan, provide a procedure for any Plan amendments, and assign who has  
15 authority to amend the Plan, in violation of ERISA §§ 402(b)(2) and (3),  
16 29 U.S.C. § 1102(b)(2) and (3).  
17 d. Failing to specify, by written instrument, the basis on which payments are  
18 made to and from the Plan, in violation of ERISA § 402(b)(4), 29 U.S.C. §  
19 1102(b)(4).  
20 e. Failing to name in trust instrument or Plan instrument a person who is a  
21 named fiduciary as a trustee, in violation of ERISA § 403(a), 29 U.S.C. §  
22 1103(a).

23 3. Defendant Company and Defendant Ozawa are co-fiduciaries under ERISA §  
24 405(a)(1) and (2), 29 U.S.C. § 1105(a)(1) and (2) for all ERISA violations, as each was aware, or  
25 reasonably should have been aware, of the breach of fiduciary responsibility of the other  
26 Defendant, making them jointly liable for said breach of fiduciary responsibility to the Plan.

27 4. As a proximate and direct result of the above violations, Defendant Company and  
28 Defendant Ozawa have denied Plan participants and beneficiaries of timely employee

1 contributions into the Plan, and Defendants have denied Plan participants of lost opportunity  
2 costs.

3 II.

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

5 1. Within thirty (30) days of entry of this Judgment and Order, Defendant Company  
6 and Defendant Ozawa shall make payment to the Plan in the amount of \$41,077.99 to remedy  
7 missing employee contributions for Plan participants, and shall make payment to the Plan in the  
8 amount of \$10,356.90 in lost opportunity costs, which are calculated at the post-judgment  
9 interest rate contained in 28 U.S.C. § 1961 for the overdue contributions. Post-judgment interest  
10 will continue to accrue pending payment. No amounts restored shall go to the Plan account of  
11 Defendant Ozawa.

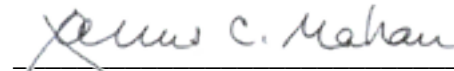
12 2. Defendant Company and Defendant Ozawa shall restore the employee  
13 contributions and pay the lost opportunity costs to the Plan participants in an amount that is set  
14 forth by the Secretary in **Exhibit A** of this Judgment. No amounts restored shall go to the Plan  
15 account of Defendant Ozawa. Within ten (10) days of restoring employee contributions and  
16 paying lost opportunity costs, and no later than August 15, 2020, Defendant Company and  
17 Defendant Ozawa shall provide all written proof and documentation to the Secretary that the  
18 amounts were restored and correctly allocated to the Plan participants.

19 3. Effective immediately upon entry of this Judgment and Order by the Court,  
20 Defendant Company and Defendant Ozawa are permanently enjoined and restrained from  
21 violating any provision of ERISA in the future. Except to complete the functions set forth in  
22 Section II, Paragraphs 1 and 2, Defendant Ozawa is permanently enjoined and restrained from  
23 serving as a fiduciary or service provider in connection with any ERISA-covered plan.  
24 Defendant Company may remain a fiduciary to the Plan. However, Defendant Company must  
25 appoint new fiduciaries to oversee contributions to the Plan and any other ERISA-covered plans  
26 offered by Defendant Company.  
27  
28

1 The Court directs the entry of this Judgment as a final Order. This Court shall retain  
2 jurisdiction to enforce this Judgment and Order.

3 IS IT IS SO ORDERED, ADJUDGED, AND DECREED.  
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6 DATED: July 27, 2020 \_\_\_\_\_  
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10 HONORABLE JAMES C. MAHAN  
11 UNITED STATES DISTRICT JUDGE  
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SIN CITY INVESTMENT GROUP, INC., et al.

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Case No. 2:19-cv-00361

**DECLARATION OF NICHOLAS  
SCHROTH**

Hon. Judge James C. Mahan

1 I, NICHOLAS SCHROTH, declare as follows:

2 1. I am an Investigator employed by the Employee Benefits Security Administration  
3 of the U.S. Department of Labor (“EBSA”), and I am based in San Francisco, California.

4 2. I have personal knowledge of the matters set forth below. If called as a witness, I  
5 could and would testify competently to the matters set forth below.

6 3. I was assigned to the investigation of American Leak Detection SIMPLE IRA  
7 Plan (“the Plan”), which, as the investigation showed, was established in 2003 by American  
8 Leak Detection (“American Leak”), a business purchased by Sin City Investment Group (“SCI”)  
9 in 2002.

10 4. The results of the investigation show that employee contributions could be  
11 reasonably segregated into the Plan within seven (7) days.

12 5. EBSA calculated that from March 1, 2013 to May 20, 2017, American Leak and  
13 Leland Keith Ozawa untimely remitted \$94,648.41 in employee contributions to the Plan. The  
14 investigation showed that employee contributions were late ranging from eight (8) to 1530 days.  
15 An updated calculation shows that American Leak and Ozawa untimely remitted \$90,376.65 in  
16 employee contributions.

17 6. EBSA calculated that \$54,677.99 in employee contributions have been withheld  
18 by American Leak and Ozawa from Plan participants from March 1, 2013 to May 20, 2017 but  
19 never remitted to the Plan. Of these amounts, \$13,600.00 was unremitted to Ozawa’s account  
20 leaving \$41,077.99 that was not remitted to the accounts of other participants.

21 7. I calculated the lost opportunity costs resulting from Defendants’ ERISA breaches  
22 as of July 6, 2020. I prepared a spreadsheet and calculated lost earnings from March 1, 2013 to  
23 July 6, 2020, which totaled \$10,356.90. I used post-judgment interest rates as set forth in 28  
24 U.S.C. § 1961 for all years in making this calculation.

25 8. The Plan, excluding Ozawa, is owed \$41,077.99 in employee contributions, and  
26 \$10,356.90 in lost opportunity costs. Attached hereto as **Exhibit A** are my calculations.

I declare under penalty of perjury that the foregoing is true and correct. Executed in San Francisco, CA on June 29, 2020.

**NICHOLAS  
SCHROTH** Digitally signed by  
NICHOLAS SCHROTH  
Date: 2020.06.29  
16:08:16 -07'00'

NICHOLAS SCHROTH



# EXHIBIT A

**EXHIBIT A**

| <b>Plan Participant</b> | <b>Outstanding<br/>Employee<br/>Contributions</b> | <b>Lost Opportunity<br/>Costs</b> | <b>Total Due</b>   |
|-------------------------|---|-----------------------------------|--------------------|
| Eduardo Otero           | \$29,402.63                                       | \$7,080.96                        | \$36,483.59        |
| Linda Markiewiez        | \$3,232.50  | \$928.46                          | \$4,160.96         |
| Robert Collins          | \$8,442.86  | \$2,347.49                        | \$10,790.35        |
| <b>TOTAL</b>            | <b>\$41,077.99</b>                                | <b>\$10,356.90</b>                | <b>\$51,434.89</b> |